



MEMORANDUM

TO: Bob Klein, Chair, and Members of the
Alcoholic Beverage Control Board

DATE: December 17, 2018

FROM: Erika McConnell, Director

RE: 1566 Steve's Sports Bar and Grill

Requested Action: 4th Waiver Application

Statutory Authority: AS 04.06.090(b): "The board shall review all applications for licenses made under this title and may order the director to issue, renew, revoke, transfer, or suspend licenses and permits authorized under this title."

3 AAC 304.170(b): "A licensee may apply to the board, requesting that the board waive the operating requirement of AS 04.11.330(a)(3)... Under AS 04.11.330(a)(3), the board will determine whether, through no fault of the licensee or because the premises are under construction, the licensed premises could not be operated for the required time during the preceding calendar year."

3 AAC 304.170(e): "The board will, in its discretion, deny a third or subsequent consecutive application for waiver unless the licensee clearly shows that the licensed premises were not operated because the premises were condemned or substantially destroyed by any cause. If the premises identified on an applicant's license are not leased or owned by the licensee, the third or subsequent application will, in the board's discretion, be denied. Additionally, a third or subsequent consecutive application for waiver that does not identify a licensed premises location will, in the board's discretion, be denied."

Staff Rec.: Deny the 4th waiver request

Background: On January 23, 2018, the board approved a third waiver for this license with the caveat that a fourth waiver will not be granted. The first, second, and third waivers were approved for 2015-2017, so the license has not been operated for four years. As this license is currently in "no premises," no licensed premises were condemned or substantially destroyed.

Attachment: January 23, 2018, ABC Board minutes (excerpt)
Waiver application

License: Beverage Dispensary

- 2. 4012 Restauranté Orso** **TAB 61**
737 W 5th Avenue; Anchorage
License: Beverage Dispensary – Duplicate

F. The North West Company (International), Inc.: 12/11/2017 – Unreported change of officers

- 1. 775 Nome Liquor Store** **TAB 62**
303 Front Street; Nome
License: Package Store
- 2. 1463 Alaska Commercial Company #175** **TAB 63**
#5 Airport Way; McGrath
License: Package Store
- 3. 3410 Alaska Commercial Company #235** **TAB 64**
106 Nicholoff Way; Cordova
License: Package Store
- 4. 3537 Alaska Commercial Company** **TAB 65**
908 Nome-Teller Highway; Nome
License: Package Store
- 5. 5418 AC Quickstop** **TAB 66**
131 Akakeek Street; Bethel
License: Package Store

G. Three Bears Alaska, Inc.: 12/21/2016 – Op. at unauthorized location; minimum op. requirement

- 1. 534 Three Bears** **TAB 67**
17119 W Parks Highway; Houston
License: Package Store
- 2. 1269 Bear’s Den Lounge** **TAB 68**
Mile 1312 Alaska Highway (Tok); Outside/Unorganized
License: Beverage Dispensary
- 3. 1270 Bear’s Den Liquor** **TAB 69**
Mile 1312 Alaska Highway (Tok); Outside/Unorganized
License: Package Store

● **WAIVERS OF MINIMUM OPERATING REQUIREMENTS**

A. Third Waiver Applications for Calendar Year 2017

- 1. 1566 Steve’s Sports Bar & Grill: SLF International, Inc.** **3:02pm** **TAB 70**
No Premises; Municipality of Anchorage
License: Beverage Dispensary

Ellen Ganley moves to approve the (third waiver) request with the caveat that a fourth waiver will not be granted.
Bobby Evans seconds the motion.
Motion carries unanimously.

- 2. 1992 Brown Jug:** Liquor Stores USA North, Inc. **3:03pm** **TAB 71**
No Premises; Municipality of Anchorage
License: Package Store

Ellen Ganley moves to approve (the third waiver) with the understanding that a fourth waiver will not be granted.
Tom Manning seconds the motion.
Motion carries unanimously.

- 3. 4230 Camel Rock Lounge:** Dimond Center Hotel, LLC **3:04pm** **TAB 72**
700 E Dimond Boulevard; Municipality of Anchorage
License: Beverage Dispensary – Tourism

Bob Klein asks if the licensee is aware that it needs to operate for at least eight hours.
Sarah Oates states that she met with the General Manager, and that the licensee has been reminded that although it is not required to be open for eight hours every day, it must operate for eight hours for at least thirty days each calendar year.

Ellen Ganley moves to approve (the third waiver) with the understanding that there will not be a fourth waiver.
Bobby Evans seconds the motion.
Motion carries, 4-1 (Bob Klein votes No).

- 4. 4547 No DBA:** North Star Dining, LLC **3:07pm** **TAB 73**
No Premises; City of Fairbanks
License: Beverage Dispensary

Ellen Ganley moves to approve (the third waiver) with the understanding that a fourth will not be granted.
Bobby Evans seconds the motion.
Motion carries, 4-1 (Rex Leath votes No).

B. Requests to Waive Waiver Application & Late Fees

- 1. 5498 Girdwood Picnic Club:** Girdwood Picnic Club **3:10pm** **TAB 74**
194 Hightower Road (Girdwood); Municipality of Anchorage
License: Restaurant or Eating Place

Erika McConnell informs the Board that the licensee has applied for its first waiver (which the Board delegated to the director at its last meeting). She adds that the licensee was issued a temporary on December 13, 2016, which disabled the licensee from meeting the minimum operating requirement.

Rex Leath moves to waive the fees.



Alaska Alcoholic Beverage Control Board

Form AB-29: Waiver of Operation Application

What is this form?

This form is the means by which a licensee may request that the Alcoholic Beverage Control (ABC) Board waive the operating requirement of AS 04.11.330(a)(3) or (d). If a recreational site license has not been operated at least once in a calendar year, or if a license of any other type has not been operated for at least 240 hours in a calendar year, then a complete copy of this form and the corresponding fees must be submitted for that calendar year, per 3 AAC 304.170.

This application must be accompanied by a non-refundable waiver application fee of:

- for a 1st request, an amount equal to ½ the applicable biennial license fee; or
- for a 2nd or subsequent request, double the amount of the fee paid for the previous waiver application.

The ABC Board will determine whether, through no fault of the licensee or because the premises are under construction, the licensed premises could not be operated for the required time during the calendar year. The ABC Board may impose conditions along with the approval of an application for waiver, and it may deny a third or subsequent application for waiver. If an application for waiver is denied, an application for license renewal for the succeeding license period will be denied by the Board. In addition to the waiver application fee, the applicant must pay a late fee of \$1,000 for an application that is received too late for Board consideration at its meeting before November 30 of the year for which the waiver is requested. Please check AMCO's website for meeting agenda deadlines.

Please note that a licensee must submit a separate completed copy of this form and pay a separate corresponding fee for each license and for each calendar year during which a license was not operated in compliance with AS 04.11.330.

Section 1 – Establishment Information

Enter information for the license that has not been operated for the time required under AS 04.11.330.

Licensee:	SLF International, Inc.	License Number:	1566		
License Type:	Beverage Dispensary				
DBA:	Steve's Sports Bar and Grill				
Premises Address:	No Premises				
City:	Anchorage	State:	Alaska	ZIP:	
Local Governing Body:	MOA				

Section 2 – Request Number and Calendar Year

1st Request 2nd Request 3rd Request Other _____ 4th

Request for Calendar Year _____ 2018 _____





Alcohol and Marijuana Control Office
 550 W 7th Avenue, Suite 1600
 Anchorage, AK 99501
alcohol.licensing@alaska.gov
<https://www.commerce.alaska.gov/web/amco>
 Phone: 907.269.0350

Alaska Alcoholic Beverage Control Board

Form AB-29: Waiver of Operation Application

Section 3 – Reason for Non-operation

Provide an explanation as to why the licensed premises were not operated:

SEE ATTACHED MEMO.

Section 4 – Certifications

The following must be completed for establishments located within the boundaries of a local governing body:

Read the line below, and then sign your initials in the box to the right of the statement:

Initials

I certify that I will provide a true copy of this application to the local governing body listed on Page 1 of this form prior to ABC Board consideration of this application.

As a liquor licensee, I declare under penalty of perjury that this form, including all attachments, is true, correct, and complete.

Signature of licensee

Steve Fibranz

Printed name of licensee

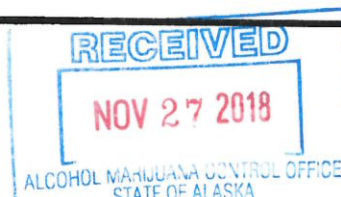
Notary Public in and for the State of Alaska.

My commission expires: 5-13-2019

Subscribed and sworn to before me this 26 day of November, 2018.

Office Use Only

Waiver Application Fee:	<u>10,000-</u>	Late Fee:	<u>—</u>	Transaction #:	<u>979495</u>
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MEMO TO ABC BOARD

TO: Alcohol Beverage Control Board
CC: Erika McConnell, Executive Director
RE: SLF International, Inc., Steve Fbranz
FROM: Dan Coffey, Attorney for Applicant
DATE: 11/27/2018

REQUEST: 4TH WAIVER OF THE OPERATING REQUIREMENTS

The Licensee is requesting a 4th waiver of the operating requirements set out in the statutes and regulations of the Board subject to conditions imposed by the Board.

BACKGROUND

The Licensee was granted three (3) previous waivers of the operating requirements. At its January 2018 Board meeting ABC Board granted a third waiver. In March, 2018, the Licensee began an extensive effort to find a new location for his license.

This effort is reported on the attached document prepared by the client. As you can see, after learning of the Board's comment about no further waivers at its January meeting, the Licensee doubled his efforts to find a new location.

After several unsuccessful efforts to find a new location, the Licensee executed a "Rental Agreement" with Chong Sanders on September 11, 2018 (copy attached). Unfortunately, the Licensee did not know that the Special Land Use Permit, issued by the Municipality of Anchorage, provided for that sale of beer and wine only. In order to transfer his beverage dispensary license to this location and operate the license for the required 240 hours, a new Special Land Use permit allowing for the operation of this type of license would be required. The Licensee was advised by the Municipality that he could not expect that permit to be issued until January, 2019. For that reason, the rental agreement with Chong Sanders was termination.



ISSUE BEFORE THE BOARD

The issue for the Board to consider is whether or not it should exercise its broad discretion to approve a conditional 4th waiver.

FACTS WHICH SUPPORT THIS REQUEST

There are several facts and circumstances which support this extraordinary request.

First and foremost is the Licensee's ignorance as to the lengthy time necessary to accomplish a relocation of a Beverage Dispensary Liquor license, in particular, the Municipality's requirement of a Special Land Use Permit for any proposed location. Having not been actively operating for the previous three (3) years and before that hiatus, having been at a single location on Fireweed Land for several years, the Licensee was unfamiliar with the fact that it takes months and months to secure all of the necessary permits.

The Licensee is well aware that his ignorance on the regulatory process is not an excuse, but that ignorance and the difficulty in even finding a location, are factors for this Board to consider in regards to this 4th waiver request.

After several fruitless not trying to find location the Licensee believed that he had secured a location for his license in early September when he reached an agreement with Chong Sanders. Copy attached.

Unbeknownst to the Licensee, this rental agreement was with a premise that had an existing land use permit for sale of beer and wine only. The Licensee was not aware that he would have to secure a Special Land Use permit a beverage dispensary licensed operation from the Municipality.

After signing the one page rental agreement, in September the Licensee, without assistance from staff or legal counsel, prepared an application for a transfer of location of his beverage dispensary license. Advertising for the new location began September 5th.

The Licensee filed the transfer of location application on September 24th. The staff promptly reviewed that application on September 25th. When the application for transfer of location was reviewed by staff numerous errors were found. As a result, the staff required the Licensee to re-advertise the transfer application which was completed October 14th and the affidavit publication was refiled October 16th.



The Board should be aware that, starting at the end of September, the Board's staff worked diligently with the Licensee in his efforts to relocate so the license could be operated this year. Had the Licensee gone to the staff in September, prior to completing and posting the initial relocation application with its numerous mistakes, it might have been possible to operate this license in 2018. Of course, that assumes that the Municipality could have approved the change in the Special Land Use permit to allow the relocation and operation of a beverage dispensary license at a premise licensed as a restaurant with a restaurant/eating place license Special Land Use permit.

In mid-October, the Licensee was advised by Municipal staff that the Municipality would not be able to review and approve a new Special Land Use permit for as Beverage Dispensary license at the proposed location until January, 2019. That information was a stake in the heart for the Licensee. He then informed the Chong Sanders that he could not proceed further with their agreement.

TIME LINES

The Board's transfer process is a minimum of 2 to 3 months assuming no mistakes are made and the timing of staff, Board and Municipal review is not extended. The Municipal's permitting process to obtain a new Special Land Use permit and to secure a non-protest of the relocation of the license is 3 to 4 months. Even if both applications are made and processed concurrently, transferring the location of a Beverage Dispensary Liquor license takes between 4 to 6 months if the process involves both the Board and the Municipality.

The Licensee was completely unaware of these time lines. He was also not aware that the Special Land Use permit at his chosen location did not permit the use of a Beverage Dispensary License. Had he understood these circumstances and assuming he could have found a location earlier, he would have started this process much, much earlier and would have undoubtedly found a location with a Beverage Dispensary License land use permit.

Unfortunately for the Licensee, he did not seek staff's assistance when he first started the relocation process in early September. This failure on the Licensee's part to properly complete the initial application correctly, being required to re-advertise the location transfer application and not knowing of the Municipalities requirement for a Special Land Use permit, made it impossible to secure the Board's approval of the relocation at its October Board meeting.



We cannot resist adding that had the Licensee, at the beginning of this process, sought advice from experienced attorneys, he would have begun the process shortly after the January 2018 Board meeting. Our Law Firm is fully aware of these lengthy time lines and the opportunities for delays that occur all too frequently.

As a result of these factors, the Licensee now finds himself where he is forced to plead for a conditional 4th waiver resulting mainly from his lack of understanding of the regulatory circumstances that exist in Anchorage, Alaska in 2018.

In the absence of this Board's grant of a conditional 4th waiver, the Licensee will lose an asset worth at least \$225,000.00.

PROPOSAL FOR THE BOARD'S CONSIDERATION

In order to ensure that any 4th waiver that the Board might grant can be revoked by the Board if the Licensee fails to meet the following requirements, the Licensee proposes that the Board impose the following conditions:

1) Require that a premises lease or purchase agreement for the relocation of the liquor license be filed with the Board on or before January 31, 2019.

-We are currently negotiating with three (3) premises all of which hold a Special Land Use permit for sales by Beverage Dispensary Licensee.

-If we are successful in reaching an agreement, we intend to submit a Letter of Intent well in advance of the Board's December meeting.

2) The Licensee will not sign a Rental Agreement/Lease with any location unless there is a valid existing Special Land Use permit in place.

-Note that the Law Firm has advised the Licensee that he must secure a premise that has a valid Special Land Use permit from the Municipality for the sale of alcohol with a beverage dispensary license.

-This will shorten the time frame for approval of the relocation and the commencement of operations.



3) Require that a location transfer application be advertised and subsequently filed with the Board by February 1, 2019.

4) Require that the Licensee begin operations no later than July 1, 2019.

-Allow one thirty (30) day extension of this deadline if all permits and applications that are required have been timely filed with the Municipality, but the Municipality has not yet addressed these applications (i.e. Non-protest letter not provided to the Board).

5) In the event the Licensee fails to comply with these conditions or any other requirements that the Board may impose as a condition of the grant of a 4th waiver, the license **shall be forfeit**.

CONCLUSION

The situation in which the Licensee finds himself is, in part, one of his own making based on a lack of understanding of the time it currently takes to secure a location and to transfer the location of a license. Having operated for several years at one location and subsequently having three annual operation waivers, created a circumstance where the Licensee's knowledge of the regulatory hurdles was virtually non-existent.

Couple that with the difficulties in finding a location and with mistakes in the initial transfer application process and a lack of understanding of the processes of the Municipality, resulted in the Licensee being unable to operate in 2018.

The question for the Board is a simple one. Should the Board use its discretion to grant a 4th waiver based on the facts of this matter as set out above. Given those facts, the Board could conclude that, while the Licensee made mistakes, his 3-year absence from the business, his lengthy operation at one location and his lack of knowledge as to the Municipality's requirements, is understandable and arguably excusable by the Board.

The ultimate question for the Board is this. Is forfeiture an appropriate sanction for the Licensee not starting soon enough and for his ignorance of the ordinances of the Municipality? Loss of this License is a very severe penalty for a combination of ignorance and mistakes not misconduct and not malfeasance.

The Licensee is asking the Board to grant him one last opportunity to save his license. If the Board does grant the Licensee this last chance opportunity, our Law Firm will insure that the conditions set out herein and any others that the Board might require, will be promptly and properly met.



If the Board is not willing to exercise its discretion to allow a 4th waiver, the Licensee will lose a license with a minimum value of \$225,000.00.

Thank you for your consideration of this unusual request. On behalf of our client we hope you will find your way to grant the requested conditional 4th waiver.

DATED at Anchorage, Alaska this 27rd day of November, 2018.

Ernouf & Coffey, PC



Dan K. Coffey
Alaska Bar Number 75-0501



2018

- o March learned online of third waiver
- o March Beluga Billiards, 3841 Dimond, building not in use
- o March Kobuk, 504 West Fourth, for sale
- o April 2210 East Northern Lights, leased out
- o April 302 G Street, for sale [\$189,000.00]
- o April 400 Sitka, for sale [80,000.00]
- o May Yak and Yeti, Spenard Road, for sale, in use
- o May Alaska Alchemist, Fourth and A, no call return
- o May Fairbanks Street, empty building
- o May Crazy Hook Pub, 601 West 36th
- o June Office Lounge, Northern Lights
- o June 4216 Spenard [Arkansas Drive], empty building
- o June Old Quiznos, 710 Northern Lights, leased out to

pulltabs

- o June Rolf's Sports Bar, 3515 Mountain View, closed for

summer

- o July 550 West 64th, empty warehouse
- o July Nielsen Way, 64th and Arctic, empty warehouse
- o August Chilkoot Charlies, Spenard Road
- o August Out of Box, 3807 Spenard Road, not in use
- o August Center Bowl, Spenard and Minnesota
- o August TK Korean, restaurant open, August 10



ADDENDUM TO MEMO TO BOARD

To: Erika McConnell
From: Dan Coffey
Cc: Amanda Shawcross
Re: Steve Fibranz
Date: 11-28-18

This Addendum is intended to supplement our Memorandum filed on 11-27-18

I learned today, that on 11-26-18 Mikal Milton sent an e mail to Amanda Shawcross in our office. A copy that e mail is printed out below.

Hello,

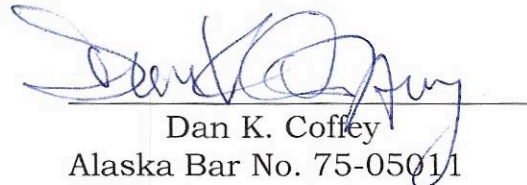
Please find the requested sound bite attached. Mr Fibranz did not receive a third waiver approval notice due to the communication recorded in the license file between he and our staff that indicated he was informed about the board action regarding his third waiver on 9/27/2018. If you would like to review the file, please make a records request as usual.

Thank You,

Mikal Milton
Records and Licensing Supervisor
Alcohol and Marijuana Control Office

In addition, attached to you find a Letter of Intent to lease an existing licensed premises. I will provide details to you about this Letter of intent when we meet. Please make sure this Addendum is submitted to the Board along with our initial filing yesterday.

Thank you.


Dan K. Coffey
Alaska Bar No. 75-05011

LETTER OF INTENT
Lease of the Woodshed

This Letter of Intent is entered into this 28th day of November, 2018 by and between the Woodshed, Inc., Landlord and Steve Fibranz, d/b/a Steve's Sports Bar, Tenant.

The parties are discussing a Lease of the Landlord's existing licensed premises and are currently working on the details of that Lease.

Those details include the amount of rent, the required insurance, payment of utility charges, hours of operation, repairs and maintenance of the licensed premises, and all other issues associated with a liquor licensed premises in the State of Alaska and the Municipality of Anchorage.

The parties agree to negotiate, in good faith, the terms and provisions of a Lease that addresses the items set forth above and such other items as may be required for a commercially reasonable Lease related to the on premises consumption of alcoholic beverages.

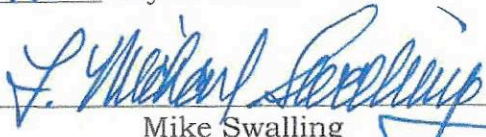
The negotiation of that Lease shall be successfully concluded prior to the ABC Board's December meeting and presented to the Board as proof of the Tenant's "right, title and interest" in the licensed premises. If the parties are unable to reach an agreement on the final terms and conditions of a Lease prior to the ABC Board's December meeting, this Letter of Intent shall be null and void and both parties shall be relieved of any and all obligations set forth in this Letter of Intent.

The intent of the parties is to have a completed, but unsigned and non-binding Lease ready for presentation to the ABC Board at its December, 2018 meeting. If the Tenant's 4th waiver application is approved, the parties shall execute the negotiated Lease which shall be binding of the parties.

In the interim between this Letter of Intent and the ABC Board meeting in December, this Letter of Intent may be submitted to the ABC Board by the Tenant to demonstrate that the Tenant is in the process of securing a premise wherein he can operate his license. Further, if the parties reach an agreement on the Lease before the December Board meeting, an unexecuted copy may be presented to the Board by the Tenant.

DATED at Anchorage, Alaska this 28th day of November 2018.

Steve Fibranz
On behalf of Steve's Sports Bar


Mike Swalling
On behalf of the Woodshed, Incorporated